No. 80-328

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ALEXANDER L. STEVAS
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IN THE
Supreme Court of the United States
OCTOBER TERM, 1980

THE PEOPLE OF THE STATE OF NEW YORK,
Petitioner,

v.

ROGER BELTON,
Respondent.

ON WRIT OF CERTIORARI TO
THE NEW YORK STATE COURT OF APPEALS

BRIEF FOR RESPONDENT

PAUL J. CAMBRIA, JR.
LIPSITZ, GREEN, FAHRINGER,
ROLL, SCHULLER & JAMES
One Niagara Square
Buffalo, New York 14202
(716) 849-1333
Attorney for Respondent

Of Counsel:
BARBARA DAVIES EBERL
One Niagara Square
Buffalo, New York 14202
(716) 849-1333

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QUESTION PRESENTED

Whether the warrantless search of respondent's zippered jacket in the absence of exigent circumstances, while it was within the exclusive control of the police (and outside of respondent's reach) and the seizure of contraband from its zippered recesses violates the Fourth Amendment.

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STATEMENT OF THE CASE

On April 9, 1978, respondent Roger Belton and three companions, all of whom were from Buffalo, were travelling west in a blue Chrysler automobile on the New York State Thruway in the area within the jurisdiction of the Town of Phelps (A-13, A-17). New York State Trooper, Douglas Nicot, in an unmarked patrol car, was also travelling westbound in the passing lane (A-13, A-14). When he observed the Chrysler gaining speed on his vehicle, he pulled over to the right hand lane (A-13, A-31). After the blue auto moved in front of the unmarked patrol car, the trooper estimated that it was travelling at approximately 75 miles per hour in a 55 mile per hour zone (A-13, A-31). Trooper Nicot motioned the private vehicle over to the shoulder of the road, to arrest the driver for a speeding violation (A-14, A-42). The driver rolled down his window and complied with the trooper's request for his license and registration (A-14, A-17, A-32). Upon examining the registration, the trooper discovered that the car was not owned by any of the four individuals but was registered to an unrelated woman in Buffalo, and he later discovered that the license produced by the driver was not his own (A-18, A-32). Appellant was seated in the rear seat behind the driver (A-18).

At the subsequent suppression hearing held in Ontario County (New York) Court, the officer testified that he smelled the odor of burning marijuana emanating from inside the stopped automobile (A-14). There was no evidence of any marijuana cigarettes in plain view (A-38). Nevertheless, the trooper concluded that the individuals were unlawfully in possession of marijuana, placed them under arrest and commanded them to exit from the car (A-18). As the four men got out of the vehicle, the officer placed them a distance

apart from each other and conducted a pat-down search for weapons, which proved negative (A-19, A-33, A-35). Trooper Nicot testified that there was no reason to draw his service revolver and accordingly never did so at any time (A-32, A-33). The trooper then entered the car and conducted a further search, discovering on the floor in the front seat of the auto a manilla envelope stamped "Supergold" (A-19, A-20). The officer looked inside the envelope and saw a minute quantity of marijuana residue (A-20, A-36). A search of the rest of the auto's interior failed to turn up any evidence of burning marijuana; however, some butted cigarettes were found (A-44).

Trooper Nicot then formally apprised the defendants of their arrest, read them their *Miranda* rights, and again search each of them, this time thoroughly, for further evidence (A-20, A-21, A-36, A-40). After this was completed, Trooper Nicot then re-entered the parked vehicle (a two-door model) and conducted a further intensive search of not only its contents, but as well a particular item of personal clothing found on the back seat (A-21, A-41).

Lying in the middle of the back seat was a black leather jacket with four or six pockets (A-21, A-41). None of the defendants was within any reach of the jacket since they were all outside of the car and under arrest, nor was there any indication that this personal item of clothing contained a concealed weapon (A-48). Indeed, the trooper testified that he first patted it down, thus assuring himself that it contained no dangerous instrument hidden inside (A-42). Officer Nicot then picked the jacket up with one hand and thereby reduced it to his exclusive possession and control. He immediately unzipped and/or opened all of the pockets and while searching, discovered in one of the recesses two marijuana cigarettes (A-22, A-48, A-49). In another

zippered pocket, Trooper Nicot discovered a twenty dollar bill and upon unfolding the currency, saw a small quantity of white powder (A-21, A-41, A-49). The warrantless examination of the jacket also yielded a plastic bag containing white powder, and the personal medical insurance card of respondent (A-21, A-22, A-49). None of these items was visible until Nicot opened the pockets.

Based upon these findings, the trooper then further arrested all four defendants for illegal possession of suspected cocaine. Throughout this entire illegal search and seizure, the defendants were separated and outside of the two-door vehicle, unarmed and within the control and custody of an armed and trained New York State Trooper (A-32, A-33, A-48). The trooper radioed to his nearby barracks at Junius Ponds, New York, and requested that a magistrate be made immediately available for the arraignment of the four individuals on charges of unlawful possession of marijuana and illegal possession of a controlled substance (A-50, A-51). At no time was there a claim by Trooper Nicot nor other evidence that his own personal safety was in jeopardy, or that the defendants had been anything other than fully cooperative, or that they were in a position to deprive him of the exclusive custody and possession of the jacket which he had assumed by taking it into his hands (A-32, A-33).

The four defendants and the jacket were swiftly transported to the Town of Phelps court and brought before the Honorable Paul W. Adams (A-51). Respondent was presented with an information charging him with unlawful possession of marijuana in violation of Penal Law § 221.05 (A-51, A-52).[1]

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[1]Without the benefit of counsel, but after being informed that a fine would be imposed, a plea of guilty was entered to the marijuana offense (A-54).

Evidence on the cocaine charge, including the testimony of Trooper Nicot, was presented to the Ontario County grand jury (A-30). As a result, respondent was indicted on May 24, 1978 for criminal possession of a controlled substance in the fifth degree (A-3). The court denied respondent's motion to suppress the cocaine seized during the illegal search, and he subsequently pleaded guilty to attempted criminal possession of a controlled substance in the sixth degree (A-1, A-67). The court granted the defense motion for bail pending the determination of the appeal to the Appellate Division, Fourth Judicial Department of the Supreme Court of the State of New York (A-1, A-2, A-60).

The Decision of the Appellate Division

On May 22, 1979, the Appellate Division affirmed Roger Belton's conviction (A-69). Contrary to respondent's contention that none of the classical exceptions to the warrant requirement was applicable, the court nevertheless held that the search of the jacket found in the back seat of the automobile, outside the reach of all of the arrestees "was justified as a search incident to arrest . . ." (A-72). In reaching this decision, the Fourth Department overlooked the facts established at the hearing which clearly indicated that the jacket was not "ready to hand" such that respondent or his confederates could reach it to seize a weapon or destroy evidence, and that following the arrest of the four individuals by an armed trooper, the jacket was in the arresting officer's exclusive control, to wit, in his hands.

The Appellate Division also failed to follow *United States v. Chadwick,* 433 U.S. 1 (1977), and instead focused its attention on the inapplicable New York search-incident-to-

arrest case of *People v. DeSantis,* 46 N.Y.2d 82, 412 N.Y.S.2d 838 (1978), which involved the search of a briefcase taken from the hands of a defendant at the time of his arrest.

New York Court of Appeals Decision

Respondent's application for permission to appeal to New York's highest court was granted on June 27, 1979 (A-74). The conviction was reversed, the motion to suppress granted, and the indictment dismissed on June 5, 1980 when the Court of Appeals held that "[a] warrantless search of the zippered pockets of an unaccessible jacket may not be upheld as a search incident to a lawful arrest where there is no longer any danger that the arrestee or a confederate might gain access to the article" (A-77). Relying upon the record made in the trial court, the Court of Appeals rejected the justification of search incident to arrest, noting that "[o]nce defendant had been removed from the automobile and placed under arrest, a search of the interiors of a private receptacle safely within the exclusive custody and control of the police may not be upheld as incident to his arrest (*United States v. Chadwick,* 433 U.S. 1, *supra; Arkansas v. Sanders,* 442 U.S. 753, *supra*)" (A-80, A-81). In answer to the claims of the dissenting judges below and petitioner that at the time of arrest the arrestees could reach the jacket. the Court of Appeals emphasized that "the facts, as found at the suppression hearing and affirmed by the Appellate Division, were to the effect that the jacket was searched after the defendant was removed from the vehicle and then placed under arrest" (A-81, n.2).

Petitioner's writ of certiorari to the New York Court of Appeals was granted on January 19, 1981.

SUMMARY OF ARGUMENT

The proof at the suppression hearing established that a black leather jacket with zippered pockets was lying in the middle of the back seat of a two-door automobile, all the occupants of which (one of whom was respondent) had been arrested for marijuana possession, patted down by the arresting officer, and placed in the custody of this armed New York State Trooper who had more than twelve years police experience. The evidence was that from the time of their arrest, all of the defendants, each of whom was thoroughly searched, were standing outside of the stopped vehicle such that none of them could actually reach the jacket which was inside the car and thus outside of their immediate or instant control.

With the situation well in hand, the trooper went inside the car and physically took possession of the jacket by grasping it. A pat-down of the exterior of the jacket assured the officer that no weapon was concealed anywhere inside the recesses of this repository of personal articles. Nevertheless, in the absence of a warrant, the trooper unzipped the pockets of the jacket and uncovered a quantity of a substance which was revealed to be cocaine, wrapped in a twenty dollar bill.

This warrantless search of respondent's zippered jacket, in which he had an expectation of privacy, in the absence of exigent circumstances, while it was within the exclusive control of the police officer such that it could not be reached by any of the arrestees, and the seizure of contraband from its closed recesses violates the Fourth Amendment. The New York Court of Appeals, in reversing the judgment of conviction for criminal possession of a controlled substance and granting the motion to suppress, correctly held that the

warrantless search of the zippered pockets of the unaccessible jacket was not a search incident to a lawful arrest because it went outside of the boundaries established by this Court in *Chimel v. California,* 395 U.S. 752 (1969). Moreover, the State failed to meet its burden of establishing that respondent and his companions could reach the jacket to seize a weapon or destroy contraband and thus establish the search incident to arrest exception to the warrant requirement.

Furthermore, the New York Court of Appeals' proper ruling relied upon this Court's decisions in *Arkansas v. Sanders,* 442 U.S. 753 (1979); *United States v. Chadwick,* 433 U.S. 1 (1977); and *Chimel, supra,* which established that an arrestee's expectations of privacy in a receptacle outside of his immediate control are not vitiated merely by his arrest. Accordingly, the court below held that "[o]nce defendant had been removed from the automobile and placed under arrest, a search of the interiors of a private receptacle safely within the exclusive custody and control of the police may not be upheld as incident to his arrest . . ." (50 N.Y.2d at 452, 429 N.Y.S.2d at 577).

Petitioner urges that the actions of the police officer in searching the pockets of the jacket, even though they failed to establish that any of the arrestees could reach the garment, the pockets of which are commonly regarded as repositories of personal items, were justifiable as a search incident to arrest. There exists nothing on this record to indicate that the officer was in physical jeopardy nor that the evidence was in danger of being destroyed. In fact, not only did the trooper testify that there was no reason to draw his service revolver, his pat-down search of the jacket did not reveal a weapon-like object. Thus, in the absence of an articulable danger to the officer's safety or the integrity of the evidence, the

warrantless intrusion—which went beyond the traditional boundaries of a *Chimel* search incident to arrest—is wholly unjustified. Since the arrestees were in the armed officer's custody and outside of the reach of the jacket, which was in the officer's exclusive control, the New York Court of Appeals correctly applied the rules forged by this Court in *Chimel, Chadwick,* and *Sanders* to invalidate the warrantless search and seizure.

The United States maintains that the present search can be upheld even though it clearly went beyond that authorized as a legal search incident to arrest and is governed by this Court's decisions which prohibit searches of containers in which the arrestee has a reasonable expectation of privacy when the container is within the exclusive control of the arresting officer. Taking a position which would thoroughly undermine the holding in *Chimel, Chadwick,* and *Sanders,* in an attempt to return to the days when *United States v. Rabinowitz,* 339 U.S. 56 (1950), controlled, the Government argues that this search is permissible as part of the "arrest process" based upon some overlybroad finding that the container was in the "potential" reach of the arrestee, even if it was outside of his actual reach. Such a rule would make warrantless searches the rule rather than the exception.

The facts are uncontroverted that the arrest in this case was complete and the arrestees were in the custody and control of an armed trooper, who indeed, viewed the situation as so secure and neutralized that there was no reason for him to even draw his service revolver. Thus, even if the Government's untenable analysis was applied to the circumstances of this case, the search of the jacket pockets could not be upheld. More importantly, however, by arguing for the adoption of such a rule, the Government urges that all warrantless searches—even of private containers outside the

arrestee's immediate control—are justifiable as intrusions no more significant than those which attend the search of the person incident to arrest (*United States v. Robinson*, 414 U.S. 218 [1973]). The sanctioning of such a rule would render meaningless the holdings of *Chimel*, *Chadwick*, and *Sanders* which are correctly applied to the facts of this case.

Respondent and his companions were outside of the vehicle, arrested and in the custody of an armed state trooper who personally viewed the situation as nonexigent as demonstrated by his actions and statements; the jacket was outside of the defendants' immediate control and exclusively in that of the officer's from the time of the initial arrest. Thus, notwithstanding the valid arrest and search of his person, respondent nevertheless maintained a privacy interest in the zippered pockets of his jacket such that the warrantless entry into its closed recesses violated his Fourth Amendment rights as construed by this Court in *Chimel*, *Chadwick*, and *Sanders*.

ARGUMENT

I.

THE WARRANTLESS SEARCH OF RESPONDENT'S ZIPPERED JACKET IN THE ABSENCE OF EXIGENT CIRCUMSTANCES, WHILE IT WAS WITHIN THE EXCLUSIVE CONTROL OF THE POLICE (AND OUTSIDE OF RESPONDENT'S REACH) AND THE SEIZURE OF CONTRABAND FROM ITS ZIPPERED RECESSES VIOLATES THE FOURTH AMENDMENT, AS CORRECTLY HELD BY THE NEW YORK COURT OF APPEALS WHICH SUPPRESSED THE EVIDENCE AND DISMISSED THE INDICTMENT.

Since this Court's decision in *Arkansas v. Sanders,* 442 U.S. 753 (1979), many appellate tribunals have had occasion to consider whether warrantless searches of various types of "containers" and the seizures of items therefrom were violative of defendants' Fourth Amendment rights. In each instance, the inquiry necessarily focused upon (1) whether the arresting officer had reduced the container or receptacle to his exclusive control such that there was no danger that the arrestee or a confederate could reach the container to seize a weapon or destroy contraband; and (2) whether the arrestee could legitimately expect the contents of the receptacle to remain private and undisclosed to public view. In accordance with the principles enunciated in *United States v. Chadwick,* 433 U.S. 1 (1977), and *Sanders, supra,* the New York Court of Appeals correctly held that:

> "A warrantless search of the zippered pockets of an unaccessible jacket may not be upheld as a search

incident to a lawful arrest where there is no danger that the arrestee or a confederate might gain access to the article.

* * *

"That defendant retained an expectation of privacy in the contents of his jacket pockets notwithstanding the fact of his arrest is beyond dispute. Indeed, it is difficult to imagine a more private receptacle where one might place one's most personal items than the zippered recesses of a jacket. . . . *Once defendant had been removed from the automobile and placed under arrest, a search of the interiors of a private receptacle safely within the exclusive custody and control of the police may not be upheld as incident to his arrest* [citing *Chadwick* and *Sanders*]. The car was in a secure place where it could have been easily guarded, its occupants under arrest and safely away from the vehicle, their removal to the police station imminent. There was, therefore, no reason why the search should not have awaited the issuance of a warrant" (*People v. Belton*, 50 N.Y.2d 447, 449, 452, 429 N.Y.S.2d 574, 575-577 [1980]; emphasis supplied).

A brief review of *Sanders* and *Chadwick* confirms that New York's highest court was correct in ruling that the search of respondent's jacket—which was in the exclusive control of the trooper[2] who had already assured himself that it contained no weapons or other dangerous instrumentality—and the seizure of material from its closed recesses, in the absence of a warrant, was violative of respondent's constitutional rights.

[2]Since the jacket was in the trooper's exclusive control at all times following the arrest, it was necessarily outside of the immediate control of the arrestees; based on the testimony here, one is the converse of the other. Thus, there was no exigency mandating immediate search of the jacket. *Chimel v. California*, 395 U.S. 752 (1969).

The New York Court of Appeals further correctly declined to treat the search as one incident to arrest since the intrusion went far beyond the narrow limits established by this Court in *Chimel v. California,* 395 U.S. 752 (1969). Moreover, the State never met its burden of proving facts which would support such an exception to the warrant requirement (A-81, n.2). The Court of Appeals authoritatively construed the decisions of this Court and its own prior rulings and held as a matter of law that the District Attorney simply failed to demonstrate that the jacket was within the area of immediate control of any of the arrestees. Thus, upon these facts, the court below properly ruled that the search was not one incident to arrest.

The record established that from the time of the arrest, the jacket was in the exclusive control of the officer and therefore outside of the reach of respondent and his companions. Any argument advanced by the State based upon a claim of danger to the arresting officer in this case is wholly without merit for the officer's own testimony reveals that he did not treat the situation as exigent. Not only is the record barren of facts necessary to find a basis for a legal search incident to arrest—the jacket being entirely outside of the area of control of the arrestees while at the same time in the control of Trooper Nicot—the officer was so secure and unthreatened that he never felt the need to even draw his service revolver (A-32, A-33). Thus, the State's contention that the warrantless search was justifiable to protect the officer under the exception of a search incident to arrest cannot withstand even the mildest scrutiny because it is wholly unsupported by the record.

Respondent agrees with petitioner's analysis only to the extent that "each case must be examined with an eye toward its own particular facts . . ." (Petitioner's Brief at 17).

However, petitioner's proposed new rule, to supplement those already existing in *Chimel, Chadwick,* and *Sanders,* which would set forth specifically the extent of permissible search based upon "the number of participants and the degree of restraint, if any, imposed upon the arrestees" (Petitioner's Brief, *supra*), is unworkable. No such rigid rule, designed apparently simply to make it easier for the police to seize evidence at the expense of constitutional safeguards, is possible because there are incalculable variables which attend every arrest, search and seizure. The guidelines previously forged by this Court, however, are more than adequate to preserve the officer's safety and the arrestee's freedom from intrusive warrantless searches and seizures and should not be scrapped or emasculated simply to bypass the procedures necessary to lawfully acquire evidence.[3]

Nor can serious consideration be given to the recommendation of the Government (Brief for the United States at 26), which would unconstitutionally broaden the scope of warrantless searches incident to arrest. The United States would permit the search of every conceivable type of receptacle based upon some simplistic finding that the search of the receptacle was some nebulous "part of the arrest process", regardless of the arrestee's expectation of privacy or the degree of control exercised by the officer over the arrestee and the container making it impossible for the arrestee to reach the container. Indeed, the rule proposed by the Government would render meaningless the *Chimel-Chadwick-Sanders* trilogy and would constitute a regression to the now discredited rule once enunciated by this

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[3]In *Sanders,* Chief Justice Burger and Justice Stevens recognized that "We are construing the Constitution, not writing a statute or a manual for law enforcement officers" (442 U.S. at 768) (Burger, CJ. & Stevens, J, concurring).

Court in *United States v. Rabinowitz*, 339 U.S. 56 (1950). The Government urges that once an individual is arrested, not only are all his privacy rights vitiated with respect to items secreted on his person owing to the intrusive nature of the arrest itself (*United States v. Robinson*, 414 U.S. 218 [1973]), but that this diminished expectation of privacy should have no boundaries and therefore be extended to areas and containers within the "potential" reach of the arrestee—even if these receptacles are actually outside of the arrestee's reach and in the officer's exclusive control such that they would not be subject to search under the *Chimel* rule, which overruled the questionable holding of *Rabinowitz*.

Any such rule which would permit the search of containers not immediately associated with the person but all those receptacles "potentially" within the arrestee's reach, would effectively extinguish the *Chadwick-Sanders* right to privacy in receptacles seized by the officer and in his exclusive control, which right exists whether the search is remote in time and place (*Chadwick*) or spacially and temporally at one with the arrest (*Sanders, supra*, at 762). In fact, under such an ill-advised rule, it would be difficult to imagine any arrest situation in which the warrant requirement would be operative.

Moreover, both petitioner and the United States have strayed from the facts of this record, since they attempt to create an impression not supported by the trial court evidence that exigent circumstances arose out of the arrest of respondent and his companions. Indeed, the facts are quite to the contrary.[4] More importantly, not only was the

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[4]Although he was armed, the trooper never felt the need to draw his service revolver (A-32, A-33). Prior to searching the jacket, he had patted each defendant down, then placed them under arrest, separated them, subjected them to a full-blown search, then patted the jacket down, thoroughly satisfying himself that no weapons were present. Thus, the actions of the arresting officer were not those of one who perceived the situation as exigent.

warrantless seizure not justifiable by *Robinson, supra,* or *Draper v. United States,* 358 U.S. 307 (1959), the search clearly went beyond that permissible under *Chimel* in that the jacket that was searched was outside of the area from which it could have been reached by respondent or his companions, as most vividly demonstrated by the fact that it was in the immediate, exclusive possession and control of Trooper Nicot at the time it was searched since as he stated, the jacket was securely in his hands. Thus, any attempt by petitioner or the Government to justify this illegal intrusion into respondent's private jacket pockets on grounds of search incident to arrest must fail. Furthermore, the adoption of the Government's rule would violate the reasonable privacy interests which arrestees possess in containers seized by police and which are in the arresting authorities' exclusive control contrary to the spirit and letter of *Chimel, Chadwick,* and *Sanders.*

A review of the recent applications of *Sanders* and *Chadwick* confirms that the refusals of other courts to uphold searches of "containers" in which the arrestee had an expectation of privacy as incident to arrest when the arrestee could not reach the container are in line with New York's decision and the body of law honed by this Court. A brief review of *Chadwick* and *Sanders* establishes their applicability to this case, which, contrary to the arguments of both opponents, is not one involving a search incident to arrest, but rather is concerned with an arrestee's privacy expectations in the absence of exigent circumstances.

In *Chadwick, supra,* federal agents seized a footlocker from defendant's automobile and while it was within the government's exclusive possession and control, searched it, discovering large amounts of marijuana. This Court granted certiorari and in an opinion written by Chief Justice Burger,

affirmed the suppression orders entered below, stating:

> "In this case, important Fourth Amendment privacy interests were at stake. By placing personal effects inside a double-locked footlocker, respondents manifested an expectation that the contents would remain free from public examination. No less than one who locks the doors of his home against intruders, one who safeguards his personal possessions in this manner is due the protection of the Fourth Amendment Warrant Clause. There being no exigency, it was unreasonable for the Government to conduct this search without the safeguards a judicial warrant provides" (433 U.S. at 11).

Rejecting the Government's argument that the search was justifiable as one incident to a lawful arrest, this Court stated:

> "[W]arrantless searches of luggage or other property seized at the time of an arrest cannot be justified as incident to that arrest either if the 'search is remote in time or place from the arrest,' *Preston v. United States*, 376 U.S., at 367, 84 S.Ct., at 883, *or no exigency exists.* Once law enforcement officers have reduced luggage or *other personal property not immediately associated with the person of the arrestee* to their exclusive control, and there is no longer any danger that the arrestee might gain access to the property to seize a weapon or destroy evidence, a search of that property is no longer an incident of the arrest" (*Id.* at 15; emphasis supplied).

The facts in the more recently decided *Sanders* case do not differ significantly from those in *Chadwick.*[5] In

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[5]That the search in *Chadwick* was removed in time and place while the search in *Sanders* was contemporaneous is not a significant difference, for in both cases the police had exclusive control of the receptacle from the moment of the arrest such that its subsequent search was not incident to arrest. *See Sanders, supra,* at 762. *See also Chimel, supra.*

Sanders, the Little Rock, Arkansas Police Department had been told by a reliable informant that the defendant would be arriving at a *certain time* aboard a specific flight and would be carrying a green suitcase containing marijuana (442 U.S. at 753). As predicted, the individual disembarked at the appointed time and retrieved from the baggage area a green suitcase matching the supplied description (*Id.*). After having seen him place the suitcase in the trunk of a taxi, police pursued the departing auto and stopped it several blocks from the airport (*Id.*). The driver opened the trunk and revealed the green suitcase. Without asking permission of the defendant or his companion, the police opened the unlocked suitcase and discovered marijuana (*Id.*).

The trial court denied the defendant's suppression motion and he thereafter was convicted of possession of marijuana with intent to deliver (*Id.* at 756). The Arkansas Supreme Court reversed the conviction, ruling that the marijuana should have been suppressed because it was obtained through an unlawful search of the suitcase. The state's highest court found that although there was probable cause for the officers' belief that contraband was contained in the suitcase, there were no exigent circumstances justifying the failture to obtain a warrant, citing *United States v. Chadwick, supra; Coolidge v. New Hampshire,* 403 U.S. 443 (1971) (*Id.*).

Noting that this was the first occasion "to rule on the constitutionality of a warrantless search of luggage taken from an automobile lawfully stopped" (*Id.*), this Court held:

> "[T]he warrant requirement of the Fourth Amendment applies to personal luggage taken from an automobile to the same degree it applies to such luggage in other locations. Thus, insofar as the police are entitled to search such luggage without a warrant, their actions

> must be justified under some exception to the warrant requirement other than that applicable to automobiles stopped on the highway. Where—as in the present case—the police, without endangering themselves or risking loss of the evidence, lawfully have detained one suspected or criminal activity and secured his suitcase, they should delay the search thereof until after judicial approval has been obtained. In this way, constitutional rights of suspects to prior judicial review of searches will be fully protected" (*Id.* at 766).[6]

Just as the defendant in *Sanders* was entitled to the protection of the Warrants Clause and the evaluation of a neutral magistrate before his privacy interests in the contents of the suitcase were invaded so, too, was respondent entitled to this protection before his expectation of privacy in the zippered recesses of his jacket was overcome. "The mere reasonableness of a search, assessed in the light of the surrounding circumstances, is not a substitute for the judicial warrant required under the Fourth Amendment" (442 U.S. at 758). Recent rulings by federal courts of appeal, suppressing evidence seized under circumstances remarkably similar

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[6]It is clear that this Court did not intend the safeguards of *Sanders* to apply solely to items of *luggage* found in an automobile lawfully stopped. This fact is evident in the statement that "[n]ot all containers and packages found by police during the course of a search will deserve the full protection of the Fourth Amendment" (*Id.* at 764 n.13). In our case, however, there exists no problem of classification, for the nature of a multi-zippered jacket is such that it was intended to serve as a repository for various items and that any article therein placed was expected to be kept private. Indeed, what could be more private than one's own pockets! Even the Government agrees that the pockets of a jacket constitute a container in which one possesses a reasonable expectation of privacy (Brief for the United States at 10, 20).

to those of our case, support respondent's reliance on the correctness of the New York Court of Appeals decision, which in turn relied upon *Sanders.*

For example, in United States v. Benson, 631 F.2d 1336 (8th Cir. 1980), *petition for cert. filed,* 49 U.S.L.W. 3753 (U.S. Feb. 4, 1981) (No. 80-1317), state narcotics investigators had probable cause to arrest Benson for possession of cocaine. Immediately prior to his arrest, Benson was seated in the front passenger seat of a four-door compact station wagon and his brown leather tote bag was resting on the passenger side of the back seat.[7] Upon being arrested, Benson was physically removed from the vehicle by the officer and placed in a search position with his hands on top of the automobile. At the same time, another officer seized the tote bag from the back seat and opened it to discover a small blue drawstring bag bearing the words "Rich Lights". The officer determined by feel that the bag held a soft, powdery substance and upon looking inside, found a plastic bag containing a substance later determined to be cocaine.

In reversing Benson's conviction of possession with intent to distribute and conspiracy to distribute cocaine, the Eight Circuit relied upon its prior decisions in *United States v. Schleis,* 582 F.2d 1166 (8th Cir. 1978), and *United States v. Stevie,* 582 F.2d 1175 (8th Cir. 1978), *cert. denied,* 443 U.S. 911 (1979), as well as *Sanders, supra,* when it held that the defendant had a legitimate expectation of privacy in the tote bag and further that:

> "[T]he officers should have obtained a warrant before searching the tote bag. The bag was not 'immediately

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[7]A police informant was situated in the driver's seat. The car was located in an airport parking lot.

> associated with the person of the arrestee,' . . . either at the time the luggage was seized or at the time it was searched. *At the time the tote bag was seized, Benson was seated in the front seat of the vehicle and the bag was in the back seat.* . . . The bag was clearly under Officer Hutchinson's exclusive control at the time he opened and search it, and there was no longer any danger that Benson might gain access to the bag to destroy evidence or grab a weapon. . . . [T]here is no allegation that the bag held 'instrumentalities which could be dangerous even when sitting idly in the police locker.' [citations omitted] Once the police officers seized the bag and exercised exclusive control over it, they should have delayed searching it until judicial approval had been obtained" (631 F.2d at 1340; emphasis supplied).

As the above description of the facts indicates, the circumstances of the search in *Benson, supra,* are remarkably similar, however, less compelling than those in the instant case where neither respondent nor his companions was even in the vehicle at the time of the search.

United States v. Rigales, 630 F.2d 364 (5th Cir. 1980), provides a further illustration of a correct application of the *Sanders* holding to facts similar to those at bar. There the defendant-driver of a car in which two men and two women were passengers, was arrested for crossing a dirt median and for displaying dealer plates. After a thorough pat-down of all the passengers revealed nothing, the officer shined a flashlight into the automobile. There was illuminated on the floorboard of the front seat a zippered 12" x 14" x 2-1/2" case of leather or simulated leather with a bulge. The officer suspected the case contained a gun and when he picked it up, he found it very heavy. Without any further investigation, the

officer opened the case to discover a loaded pistol. In condemning the search, the Fifth Circuit wrote:

> "After a close examination of the record, we find that the instant case is controlled by *Sanders*. The government conceded at oral argument that Officer Lopez could easily have taken the zipped case to the police station and secured a warrant from a magistrate. In our view, this is tantamount to an admission that no exigent circumstances existed to justify the warrantless search. Officer Lopez' testimony supports this view. *He testified that he had asked all the occupants of the automobile to step outside the vehicle and had patted them down; there is no indication that the case was within the reach or control of the defendant or any of the passengers.* . . . Assessing 'the exigency of mobility' at the point immediately before the search, as we are required to do by *Sanders,* 442 U.S. at 763, . . . we conclude that the government has failed to carry its burden of demonstrating that exigent circumstances existed to justify a warrantless search of the zippered case" (630 F.2d at 367; emphasis supplied).

See also United States v. Montano, 613 F.2d 147 (6th Cir. 1980), unlawful search of suitcase in defendant's motel room in presence of arrestees; *United States v. Ross,* 27 Crim.L.Rptr. 2169 (D.C. Cir. Apr. 17, 1980), illegal search of leather pouch found in car trunk while arrestee was outside of car in custody of officers; *United States v. Miller,* 608 F.2d 1089 (5th Cir. 1979), *cert. denied,* 100 S.Ct. 3020 (1980), search of contents of portfolio found in automobile while passenger was still present in vehicle not compatible with Fourth Amendment; *People v. Robbins,* 103 Cal.App. 3d 34, 162 Cal.Rptr. 780 (1980), *cert. granted,* 49 U.S.L.W. 3515 (U.S. Jan. 19, 1981) (No. 80-148), cookie tin and tote bag found in passenger and luggage compartments respectively, while arrestee was outside of car,

conceded to be closed containers for which warrants were required.

The facts and circumstances of our case bring it squarely within the logic of *Sanders, Benson,* and *Rigales.* Once respondent was arrested for marijuana possession, any arguable exigency ceased, since under the circumstances, at that point in time, all of the travelers were in custody, had been thoroughly searched, the inner portion of the vehicle proper had been searched and the jacket, once patted down, was actually in the hand of the police officer, and thus, in his exclusive possession and "immediately associated" with the person of the police and not of the arrestees. The arrest process was thus completed, and the prisoners were at that point simply to be transported to the waiting magistrate. The obviously portable jacket not only could have been easily secured, as were the trunk in *Chadwick,* the suitcase in *Sanders,* the tote bag in *Benson,* and the leather case in *Rigales,* but was in fact secured by Trooper Nicot who took it with him to the magistrate in his vehicle. A warrant application could have been made to the arraigning justice before whom the defendants were to be shortly brought.[8]

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[8]That the four defendants were to be transported to the trooper substation and were to be arraigned before a magistrate is foregone by several events which occurred before the alleged cocaine was even discovered: (1) the driver was arrested for substantially exceeding the speed limit (A-13, A-42); (2) all occupants of the vehicle were from out-of-town; (3) the vehicle was registered to a woman to whom none of the occupants was related (A-17); (4) the driver presented to the officer the license of another individual not present in the vehicle (A-18, A-32); (5) all of the passengers according to the trooper were placed under arrest as soon as they exited the vehicle (A-18, A-19); (6) each passenger was given is custodial rights under *Miranda* as soon as the marijuana was discovered (A-21); (7) the arresting officer acknowledged that once the marijuana was discovered, all occupants were in custody and were going to be brought before the court (A-18–A-21, A-42, A-43, A-48).

There was no compelling need for the trooper to have examined in *any way* the private interiors of the jacket in the absenc eof a warrant, especially since the jacket (1) was totally outside of the reach of the four arrestees, (2) was in the trooper's exclusive control, i.e. his hands, and (3) had been patted down by the officer and was found to contain no weapon or dangerous instrumentality.[9]

Indeed, the lacke of exigency is underscored by the fact that Trooper Nicot actually took possession of the jacket at the scene and brought it to the courthouse. There he could have easily detailed any existing reasons which he felt established the requisite probable cause necessary to obtain a warrant to open the pockets and seize any items therein. It would then be left to the discretion of a neutral magistrate to determine objectively whether the trooper had presented facts amounting to probable cause to believe the jacket contained contraband.[10] Since these procedures could easily have been implemented, but were not, it is apparent that the search of the jacket without a warrant was in violation of respondent's Fourth Amendment rights and was therefore unreasonable.

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[9]As the Court of Appeals stressed, "[o]ne searches the record in vain for support of the dissenter's claim that at the time of arrest—the point from which the predicate for the warrantless search is measured—'the jackets were within the reach of the four suspects and had not yet been reduced to the exclusive control of the officer' (dissenting opn [A-83])" (A-81, n.2). To be legally justified, the exception of a warrantless search incident to arrest must be founded on evidence that the jacket was within the immediate control of the arrestees. The record in this case clearly refutes that assertion.

[10]This Court in *Sanders*, quoting from *Coolidge v. New Hampshire*, 403 U.S. 443, 481 (1971), noted that the "warrant requirement is not an inconvenience to be somehow 'weighed' against the claims of police efficiency" (442 U.S. at 758).

CLAIMS OF PETITIONER

As noted above, petitioner's entire argument basically parrots the unsupported views of the two dissenting justices in the court below that the arresting officer was in some form of immediate danger not disclosed by the record. Petitioner certainly did not meet its burden of demonstrating that the warrantless search of a private container outside of the arrestees' reach was justifiable on the basis of physical jeopardy to the trooper. The fact that, following the arrest, none of the arrestees could reach the receptacle militates against such a finding of exigency. Moreover, such a determination was not made because the trooper plainly stated that he subjected each of the passengers to a thorough search, patted the jacket down and discovered no weapons, and accordingly, found no reason to even unholster his service revolver. Thus the warrantless search of respondent's jacket cannot be sustained as one incident to arrest. *Chimel, supra.* Further, the authorities relied upon by petitioner involve cases where warrantless searches were upheld in wholly disparate factual situations.

For example, *United States v. Fontecha,* 576 F.2d 601 (5th Cir. 1978), was decided prior to *Sanders* and involves entirely different principles tied to searches conducted at borders. Similarly, in *United States v. Foster,* 584 F.2d 997 (D.C. Cir.), *cert. denied,* 439 U.S. 1006 (1978), a police officer, who was suspicious of the actions of three passengers in the handling of a folded grocery bag, touched the bag and feeling a weapon, was justified in opening the container—not one in which one could maintain a reasonable expectation of privacy.

A comparable situation existed in *United States v. Wilkerson,* 598 F.2d 621 (D.C. Cir. 1978), where after the

appellant-passenger had alighted from the vehicle at the officer's request, the officer reached into the front seat and placed his hand on a coat, pressed it and felt something like a shotgun. This coupled with the fact that none of the passengers had been searched or placed under arrest, clearly distinguishes this case from our own.

In *United States v. Agostino,* 608 F.2d 1035 (5th Cir. 1979), the court upheld the warrantless seizure because the contraband was in plain view, or in the alternative, because it was located within the reach of the defendant-driver. In our case, there was *no* finding that following the arrest the jacket, lying in the middle of the back seat of a two-door vehicle, was accessible to any of the four arrestees, all of whom were standing outside of the automobile in the custody of an armed state trooper. In fact, as the Court of Appeals noted, the jacket in this case was not accessible to respondent or any of his confederates. *See People v. Belton,* 50 N.Y.2d 447, 452 n.2 (1980). In *United States v. Ajlouny,* 476 F.Supp. 995 (E.D.N.Y. 1979), the searched briefcase was within the defendant's immediate control as it was only a few feet from him as he sat in the driver's seat of his car. *United States v. Ocampo,* 492 F.Supp. 1211 (E.D.N.Y. 1980), is similarly unpersuasive because the open and unsecured bag, in which the defendant could have no reasonable expectation of privacy, was within the "grabbable" range of the defendant who was merely within arm's length of it.

Factual situations relied upon by petitioner are vastly different from those about which we are concerned where none of the arrestees was within reaching distance of respondent's jacket which had been secured by Trooper Nicot's grasp. Similarly, respondent's claims to a privacy interest in his jacket pockets are not "misplaced" (Petitioner's Brief at 24) because, as noted above, pockets are a

respository of one's most personal items. Further, the language quoted by petitioners from *United Sttes v. Goshorn,* 628 F.2d 697 (1st Cir. 1980), is misleading because that case held that it is not *reasonable* to expect privacy in the plastic bags there—a vasly different container than the zippered pockets of a jacket searched here.[11]

Petitioner in essence requests this Court to set forth a static formula to be applied to fluctuating factual situations. It urges this Court to hold that no warrantless search of a private container and seizure of evidence from this receptacle when it is outside of the defendant's immediate area and thus

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[11]Nor do the state authorities relied upon by petitioner support its claim that the Court of Appeals' decision is incorrect. For example, in *State v. Hunter,* 261 S.E.2d 189 (N.C. 1980), the police had probable cause to believe that the defendant had just committed the crime of rape at gunpoint. In *Hunter,* unlike here, there existed probable cause to believ ethat a gun was present in the vehicle in which the defendant had allegedly just committed a violent crime, thus supporting a different exception to the warrant requirement (*Chambers v. Maroney,* 399 U.S. 42 [1970]). *See also Banks v. State,* 246 Ga. 178, 269 S.E.2d 450 (1980), where police had probable cause to believe that defendant possessed the weapon with which he allegedly committed murder and aggravated assault and had patted down a shirt from which the gun fell out. The situations of an alleged rapist and an alleged murderer whom the police had probable cause to believe were armed are vastly different from that presented by our case where respondent and his companions were arrested for possession of a quantity of marijuana so small it did not even amount to a crime. In *State v. Wilkens,* 354 So.2d 934 (La. 1978), a syringe discovered on the floor of the auto, directly below where the defendant stood, was within the "grabbable" range of the defendant, as well as within the plain view of the officer. In our case, however, the discovery of the cocaine within the *zippered* pockets of a black leather jacket in the back seat of a car, while respondent and his confederates were outside of the vehicle, cannot be said to have been within their immediate control or in plain view. Accordingly, *Hunter, Banks,* and *Wilkens* do not present any authority for this Court to disturb the decision of the New York Court of Appeals.

within the officer's exclusive control is illegal unless there are "x" number of police officers per "y" number of defendants, and "z" number of sets of handcuffs, etc. No such formula is possible, however, because every confrontation between a citizen and police is different and expands or contracts the degree of warrantless evidence acquisition which is constitutionally tolerable. The necessary flexibility needed to deal with such diverse factual situations is reflected by the highly workable standards fashioned by this Court in *Chimel, Chadwick,* and *Sanders.*[12]

ARGUMENTS OF THE GOVERNMENT

As indicated *supra,* the United States has chosen not to align itself with petitioner's argument and, in fact, maintains that considerations such as the number of arresting officers per suspects; the place of arrest; the nature of the container; and the suspect's position with respect to the receptacle are *irrelevant.* The Government's only inquiry would be "whether or not the search was undertaken as part of the arrest process" (Brief for the United States at 26). If so, the Government claims that the privacy expectation one has in containers would be subsumed by the privacy breach caused by the initial arrest as in the case of the search of the person incident to arrest. *See United States v. Robinson,* 414 U.S. 218 (1973).

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[12]That under these rules different results will occur in different factual situations, *see e.g., State v. Cripps,* 582 P.2d 312 (Mont. 1978), *State v. Blanchard,* 374 So.2d 1248 (la. 1978), *State v. Robalewski,* 418 A.2d 817 (R.I. 1980) (Petitioner's Brief at 17), does not render the decision of the New York Court of Appeals incorrect but merely points out the necessary flexibility a constitutional standard must have in orde to accommodate a number of diverse factual settings while at the same time maintaining an overall common understanding of applicability.

Leaving aside for the moment that the dimensions and boundaries of this nebulous "arrest process" concept are significantly more difficult to determine than are the *Chimel* and *Sanders* rules to apply, we are faced with the prospect of the creation of a limitless "zone of search license" which would render nullities this Court's decisions in *Payton v. New York,* 445 U.S. 573 (1980), *Sanders, Chadwick* and *Chimel.* Moreover, the exceptions to the Fourth Amendment's warrant requirement which have been refined by this Court, whose decisions have in turn been relied upon by countless other judicial tribunals, would be expanded such that the Fourth Amendment's prohibition against warrantless searches and seizures would be rendered meaningless once the so-called "arrest process" suggested by the Government began, regardless of exigencies, proximity to or control by individuals of "containers", etc. Thus, the law in this regard would return to the state embodied by decisions such as *Rabinowitz* which was soundly criticized by this Court more than ten years ago in *Chimel.*

This radical approach would require this Court to drastically overhaul the entire body of law reflected by *Sanders* and *Chimel.* Furthermore, none of the decisions cited by the United States even remotely suggests that if the "arrest process" is not "complete", the police possess carte blanche to search not only the arrestee's peson, but his car, the room or rooms in his house occupied at the time of his arrest, and the most secure recesses of any and all containers or receptacles that may be located within the arrestee's "potential" control, regardless of the exclusivity of control exercised by the police over the searched article, preventing an arrestee from grabbing a weapon or destroying evidence, and the arrestee's expectation of privacy in the receptacle searched.

Five of the eight cases cited by the Government in support of a contemporaneous search of containers whether or not they are in the grabbable reach of immediate control of the suspect at the time of arrest (Brief for the United States at 17, fn.7), were decided prior to this Court's pronouncements in *Chadwick* and *Sanders*. They therefore fail to reconcile the principles established by these now controlling authorities. In *United States v. Dixon*, 558 F.2d 919 (9th Cir. 1977), *cert. denied*, 434 U.S. 1063 (1978), the court upheld the seizure of a revolver from the inside of a brown paper bag. This case[13] is distinguishable from the instant case because one cannot be said to have a reasonable expectation of privacy in a brown bag, whereas an individual should reasonably expect that articles which he places in the pockets of his jacket (especially those which are zippered) will remain free from public scrutiny. A further distinction can be seen in *United States v. Garcia*, 605 F.2d 349 (7th Cri. 1979), *cert. denied*, 446 U.S. 984 (1980), where the suitcase whose search was sustained was found ready-to-hand and within the immediate control of the defendant and an as-yet-unidentified accomplice in a busy airport, unlike the jacket here which was in the middle of the back seat of a two-door vehicle while the arrestees, who were completely outside of the vehicle, were in the custody of an armed trooper. Finally, in *United States v. Graham*, 28 Crim.L. Rptr. 2528 (7th Cir. Jan. 27, 1981), the court sustained the search of a shoulder bag, appended to the arrestee's body, pursuant to a warrant authorizing the search of his person. Not only was there no warrant in the present case, the jacket which was illegally invaded was not at all near respondent or

[13]Although *Chadwick* had been decided barely a month before, there is no indication that its principles were raised or considered by the Court.

his companions, who were in the custody and control of the arresting officer.

Contrary to the contention of the United Sttes, the factors of the degree of control exercised by the officer over the container, the probability of the arrestee's reaching the receptacle, and his expectation of privacy therein are not "hairline distinctions" (Brief for the United States at 24), but are precisely the circumstances which this Court has employed to decide whether limited exceptions will be made to the strict warrant requirement of the Fourth Amendment when "containers" as opposed to the person are sought to be searched incident to arrest. Indeed, these considerations are the foundation of this Court's decisions in *Chimel* and *Sanders*. Under the Government's proposed scheme, factors such as whether the arrestee is located outside of the vehicle and the container inside away from his reach; whether the arrestee is under arrest and in custody; whether the container is in the hands of the authorities and thus under their exclusive control would be of no moment. The United Sttes would sanction a search and seizure in each of these situations as long as the so-called "arrest process' was "continuing", presumably up until after the arrestee has been booked and locked into a cell.

Such a concept would expand beyond all tolerable limits the very narrow exception created by this Court in *Chimel* and aswell invalidate the holdings in *Chadwick, Sanders,* and other decisions based upon the same principles, where the lack of exigency as typified by the exclusive control of private containers by the police was given controlling consideration. The net result of the rule lobbied for by the Government would be to permit the intrusion into any type of container regardless of exigencies, or the arrestee's reasonable expectation of privacy as long as it was preceded

by an arrest. Indeed, under the Government's view, warrantless searches would become the rule rather than the exception.

Contrary to the Government's reading of the opinion, there is nothing in the New York Court of Appeals decision which could in any way be interpreted as questioning the legality of a legitimate search incident to arrest if, from the specific circumstances, the item seized was clearly within the "grabbable" area of the arrestee. The decision below is predicated not only upon the fact that the trooper had "exclusive control" of the jacket at the time he opened its zippered recesses but also that the State failed to prove that *the jacket was therefore within the immediate control or reach* of respondent or his companions, such that its search was incident to their arrest.

Quite another question would be presented if respondent actually had been wearing the jacket at the time of his arrest. Although *United States v. Robinson,* 414 U.S. 218 (1973), held that an item seized from the person of the arrestee during a search incident to a custodial arrest is admissible into evidence, such is not the case when the intrusion is extended beyond the arrestee to private possessions not immediately associated with his person as in the case at bar.[14] Thus, any attempt to analogize *robinson* to our case is

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[14]Moreover, New York's highest court has chosen to adopt a stricter code of constitutional protections for its citizens than that required in *United States v. Robinson, supra. See, e.g., People v. Weintraub,* 35 N.Y.2d 351, 320 N.E.2d 636, 361 N.Y.S.2d 897 (1974). *See also Lego v. Twomey,* 404 U.S. 477, 489 (1972). In *Cooper v. Marin,* 49 N.Y.2d 69, 399 N.E.2d 1188, 424 N.Y.S.2d 168 (1979), *cert. denied sub nom. Lombard v. Cooper,* 100 S.Ct. 2965 (1980). The New York Court of Appeals recognized:

"We have not hesitated when we concluded that the Federal Constitution as interpreted by the Supreme Court fell short of

(continued)

doomed to failure because of the extreme disparity in their facts and the marked distinction in privacy interests at stake. Moreover, it is respondent's contention that the decision below was decided correctly and is in complete accord with the principles enunciated in *Chimel, Chadwick,* and *Sanders* and that any application of some ambiguous "arrest process' analysis is in direct defiance of the limited exceptions to the Fourth Amendment warrant requirement created by this Court. A return to *Rabinowitz* by adopting the Government's suggested extension of the *Robinson* doctrine would clearly be at war with the modern teachings of this Court expressed in *Chimel, Chandwick, Sanders, Payton* and numerous other well-reasoned decisions.

CONCLUSION

Today, more than any other time in our history, liberty is being imperiled for the sake of order. If there is a danger from those who would violate our laws, there is also a danger from the law abiding who, in an excess of anxiety, may jeopardize ourindividual liberties with a view to enforcing the law. In one sense the safety of the community may be endangered by

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(footnote continued from preceding page)

adequate protection of our citizens to rely upon the principle that that document defines the minimum level of individual rights and leaves the States free to provide greater rights for its citizens through its Constitution, statutes or rule making authority (*Sharrock v. Dell Buick-Cadillac,* 45 N.Y.2d 152, 159-161, 408 N.Y.S.2d 39, 43-45, 379 N.E.2d 1169, 1173-1174; *People v. Isaacson,* 44 N.Y.2d 511, 519-520, 406 N.Y.S.2d 714, 718-719, 378 N.E.2d 78, 81-83; *People v. Hobson,* 39 N.Y.2d 479, 483-484, 384 N.Y.S.2d 419, 421-422, 348 N.E.2d 894, 897-898; *People v. Arthur,* 22 N.Y.2d 325, 328-329, 292 N.Y.S.2d 663, 665-666, 239 N.E.2d 537, 538-539. . ." (*Id.* at 79, 424 N.Y.S.2d at 174).

restricting the power of the police to arrest persons and search their private belongings without a warrant. But in a more vital sense, the peace of the community is preserved by decisions, such as *Chimel v. California, United States v. Chadwick,* and *Arkansas v. Sanders,* which protect all of us from unlawful arrests, searches and seizures.

Law enforcement entails the consideration of value far more important than the conviction of one defendant. It involves the protection of the community's rights to privacy which are of transcendent importance. The past judgments of this Court, which have preserved the right of privacy, serve the further protection against the most horrifying symbol of a police state—the arbitrary arrest, detention and search of citizens by policemen who have become masters rather than servants of the law.

We must never forget that unconstitutional practices begin by silent approaches and slight deviations from required legal procedures. Such an erosion of constitutional safeguards can only be avoided by strict adherence to the established rules of this Court that are designed to protect everyone's security. That is all we ask here.

For all the foregoing reasons, the judgment of the New York Court of Appeals should be affirmed.

Respectfully submitted,

PAUL J. CAMBRIA, JR.
LIPSITZ, GREEN, FAHRINGER,
ROLL, SCHULLER & JAMES
One Niagara Square
Buffalo, New York 14202
(716) 849-1333

Attorney for Respondent

Of Counsel:

BARBARA DAVIES EBERL
One Niagara Square
Buffalo, New York 14202
(716) 849-1333